

United States General Accounting Office

Report to the Chairman, Subcommittee
on Water, Power and Offshore Energy
Resources, Committee on Interior and
Insular Affairs, House of
Representatives

GAO

AD-A282 264



RECLAMATION LAW

Changes to Excess
Land Sales Will
Generate Millions in
Federal Revenues



94-23395



Resources, Community, and
Economic Development Division

B-238176

February 1, 1990

The Honorable George Miller
Chairman, Subcommittee on Water, Power
and Offshore Energy Resources
Committee on Interior and Insular Affairs
House of Representatives

Dear Mr. Chairman:

Accession For	
NTIS	CRA&I <input checked="" type="checkbox"/>
DTIC	TAB <input type="checkbox"/>
Unannounced	<input type="checkbox"/>
Justification	
By	
Distribution /	
Availability Codes	
Dist	Avail and / or Special
A-1	

This report responds to your June 13, 1989, letter and subsequent discussions with your office regarding the Bureau of Reclamation's management of the sale of excess land under recordable contracts.¹ The report shows that significant revenues to the federal government are possible if reclamation law is changed.

Results in Brief

The availability of federal irrigation water to western farmland—due to the government's construction of water resources projects in the west—increases the land's value. When excess land is sold, this added value becomes a profit that is not returned to the federal government. Under existing reclamation law, about 121,000 acres of excess land under recordable contracts will be sold within the next few years, which could generate as much as \$100 million in profits. Also, other acres of excess land not under recordable contracts could be sold in future years for additional profits. Because reclamation law provides the opportunity for profiting from excess land sales, the law needs to be changed so that the federal government obtains the profit created by the construction of the federal water resources projects.

Background

In accordance with the Reclamation Act of 1902, privately-owned land in excess of 160 acres—subsequently increased to 960 acres by the Reclamation Reform Act of 1982 (43 U.S.C. 390aa to zz-1)—cannot receive federally subsidized water.² An owner of excess land, however, can obtain the subsidy, as per the Omnibus Adjustment Act of 1926, by placing the excess land under recordable contract with the Secretary of the

¹The Reclamation Reform Act of 1982 defines a recordable contract as a written contract between the Secretary of the Interior and a landowner, recordable under state law, that provides for the sale or disposition of land held in excess of the ownership limitations of reclamation law.

²However, under section 207 of the Reclamation Reform Act of 1982, the acreage can exceed the 960-acre limitation for less productive land.

DTIC QUALITY INSPECTED 5

Interior.³ The Reclamation Reform Act of 1982 changed the recordable contract period to 5 years (10 years in the Central Arizona Project). Previously, landowners who entered into these contracts could irrigate the excess land at the subsidized water rate for up to 10 years before having to dispose of it.

Under a recordable contract, the landowner is required to sell the land at its dry-land value—a value that does not reflect the value due to the availability of project water—plus any value to the land from improvements such as surface leveling and soil conditioning. The land must be sold within the specified period to an eligible buyer—an individual or legal entity who after purchasing the land does not own more than 960 acres. Once sold, the land is no longer classified as excess land.

Section 209(f)(2) of the Reclamation Reform Act of 1982 specifies that the title to excess land contain a covenant which requires that for a period of 10 years following the date of its original sale under recordable contract, the resale price not exceed its dry-land value, plus improvements. After this 10-year period, however, the land can be sold at its fair market value, which includes the added value attributable to the availability of water from the federal water resources projects.

According to a March 1981 Department of the Interior study, of the 1.1 million acres of excess land existing westwide, about 250,000 acres were under recordable contracts.⁴ As of January 1990, Bureau records indicate that about 505,000 acres of excess land remain westwide, with about 121,000 acres under recordable contracts that will expire in the early 1990s.

Almost all of the acreage under recordable contracts is located in the Bureau's Central Valley Project, with about 99,000 acres in the Westlands Water District. According to Bureau records on pending sales of excess land, as of January 1990, about 90,000 of the 121,000 acres under recordable contracts are in the process of being sold.

The availability of irrigation water resulting from the future completion of federal water resources projects may cause additional acres to

³Water delivered at rates that exclude any interest on the federal government's investment in the irrigation component of its water resources projects is referred to as subsidized water because the lost interest is viewed as a subsidy to farmers.

⁴The term westwide refers to the 17 contiguous states west of the Mississippi River that form the Bureau's area of jurisdiction.

become classified as excess land. Those landowners who will choose to irrigate their excess land with subsidized water from the federal project also will have to place the land under recordable contracts and sell it to eligible buyers.

Reclamation Law Provides Buyers of Excess Land With Profits From Federal Water Resources Projects

Reclamation law provides buyers of excess land the opportunity to obtain significant profits because, while requiring that excess land under recordable contracts be sold at the dry-land value, it allows buyers to sell the land at the fair market value after 10 years. For example, in 1989, over 23,000 acres of excess land in the Westlands Water District were sold into a trust arrangement for about \$21 million, contingent upon Bureau price-approval.⁵ The primary stated purpose of this trust, composed of employees of the trustor, is to hold the land for the required period and then sell it at a profit. Because this acreage currently has a fair market value of about \$49 million, the sale of this land, after 10 years, could result in a profit of about \$28 million for the trust beneficiaries if land values do not decline. This significant profit is made possible primarily because of the federal government's construction of water resources projects. In our view, this profit properly belongs to the federal government.

According to the Bureau's Mid-Pacific Region Appraisal Branch Chief, land in the Westlands Water District has a dry-land value plus improvements of about \$800 to \$950 per acre, and a fair market value of about \$2,000 to \$2,500 per acre. Accordingly, buyers of the remaining 121,000 acres of excess land under recordable contracts could purchase the land for about \$97 million to about \$115 million, and because it has a fair market value of about \$242 million to about \$303 million, could profit by as much as \$206 million from its future sale. Because about 90,000 acres of the 121,000 acres of excess land under recordable contracts have pending sales actions, however, the revenues the federal government would obtain if the current reclamation law were amended would be reduced to the extent that some of this acreage is subject to sales contracts conditioned by Bureau price-approval. As of January 1990, Bureau records indicate that the deeds to about 62,000 acres of the 90,000 acres have already been recorded to the buyers. We estimate that

⁵Although the Reclamation Reform Act of 1982 limits to 960 the acreage that can be irrigated with subsidized water, all 23,000 acres can be irrigated at the subsidized rate because the landholdings of each of the trust beneficiaries do not exceed the individual acreage limitations. See our report entitled Water Subsidies: Basic Changes Needed to Avoid Abuse of the 960-Acre Limit, (GAO/RCED-90-6, Oct. 12, 1989).

the revenues to the federal government from the sale of the remaining 59,000 acres of land could be as much as \$100 million.

Owners of about 384,000 acres of excess land not under recordable contracts remaining westwide may opt in the future to sell their land. According to the Bureau's regional Reclamation Reform Act coordinators, most of this land has a non-project riparian or groundwater supply, and therefore does not depend on the federal water resources projects. As such, the potential future sale of this land would not result in significant profits to the buyers. However, should any of this land be purchased to obtain federal project water, Bureau rules and regulations specify that the buyers purchase the land at its dry-land value, and allow the buyers to sell it at its fair market value, provided that the land is held for 10 years. The possible future sale of any of the 384,000 acres therefore could generate additional profits that, under current reclamation law, would go to the buyers.

Conclusion

The sale of excess land generates significant profits that are currently not returned to the federal government. Because this profit is created by the government's construction of water resources projects, however, reclamation law should be amended so that the profit can properly accrue to the federal government from the land's initial sale from excess status. We estimate that as much as \$100 million in federal revenues could be generated from the sale of the remaining excess land under recordable contracts. Additional revenues could be obtained if excess land not under recordable contracts is sold in the future.

Recommendation

In order for the federal government to obtain the financial benefits from its construction of water resources projects, we recommend that the Congress amend the Reclamation Reform Act of 1982 to require that excess land under recordable contract and excess land not under recordable contract but purchased to obtain federal project water be sold at a Bureau-approved fair market value, with the seller of the land receiving an amount equal to the dry-land value, plus improvements, and the U.S. Treasury receiving the balance. Specifically, we recommend that the Congress amend

- Section 209(f)(2) of the Act by substituting:

"October 12, 1982 but before the enactment of the Reclamation Reform Act Amendments of 1990" for "the date of enactment of this Act," and

-
- Section 209(f) further by adding the following after (2):

“(3) in the case of disposals of excess lands, including such land not under recordable contracts, made on or after the enactment of the Reclamation Reform Act Amendments of 1990, the disposal of excess lands to non-excess owners shall be for fair market value of the land, which shall be paid to the excess owners except for the fair market value related to the delivery of irrigation water, which shall be deposited in the Treasury of the United States as miscellaneous receipts. Upon such disposal the title to these lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 46 of the Act entitled ‘An Act to adjust water rights charges, to grant certain relief on the federal irrigation projects, and for other purposes,’ approved May 25, 1926 (43 U.S.C. 423e).”

Scope and Methodology

Because almost all of the excess land under recordable contracts is in the Central Valley Project in California, we focused our work on the Bureau of Reclamation's Mid-Pacific Region in Sacramento, California. We reviewed legislation and Bureau regulations relating to the excess land sales program. In addition, we obtained Bureau data relating to the excess land held in Bureau projects westwide by contacting the Reclamation Reform Act coordinators at the Mid-Pacific, Lower Colorado and Great Plains regions.

Our work was conducted between October 1989 and January 1990, in accordance with generally accepted government auditing standards.

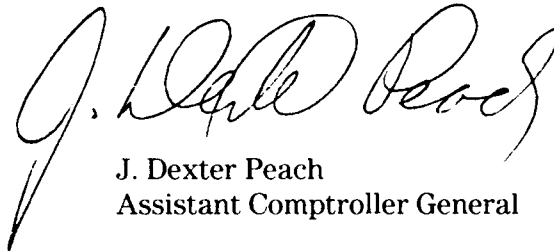
Agency Comments

As requested, we did not obtain official agency comments on a draft of this report. However, we discussed the factual information in the report with Bureau officials at the Mid-Pacific Region, who told us that our information was accurate and generally concurred with our analyses of the revenues generated from the sale of excess land under recordable contracts.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of the Interior, the Commissioner of the Bureau of Reclamation, and other interested parties.

This work was performed under the direction of James Duffus III, Director, Natural Resources Management Issues, (202) 275-7756. Major contributors to this report are listed in appendix I.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Dexter Peach".

J. Dexter Peach
Assistant Comptroller General

Major Contributors to This Report

Resources,
Community, and
Economic
Development Division,
Washington, D.C.

Leo E. Ganster, Assistant Director
Caroline C. Vernet, Staff Member

San Francisco
Regional Office

William B. Agnew, Assistant Regional Manager
George R. Senn, Evaluator-in-Charge
Mary L. Jankowski, Staff Member

Office of the General
Counsel

Stanley G. Feinstein, Senior Attorney